But neither section 394 nor section 397 mentions gang-robbery, and the question arises whether the omission means that gang-robbery is excluded or whether it is intended to be included in the term "robbery". The punishment provided by section 395 includes both penal servitude for life and whipping with a cat-o'-nine tails. Once, therefore, a person is convicted under section 395, no purpose would be served by invoking either section 394 or section 397 because neither of these sections would increase the punishment in any way. There is, therefore, no purpose in including gang-robbery in either of these sections, and this is no doubt the reason why any reference to gang-robbery is omitted from these sections. Instances in the Penal Code where aggravating circumstances make a particular act a more serious offence than the same act without the aggravating circumstances are common, and if the legislature had intended to make gang-robbery with deadly weapons or gang-robbery accompanied by grievous hurt a separate offence, it is probable that they would have made this plain by including the expression "gang-robbery" in the section and providing some additional punishment.

In any event, it would not be right to frame two separate charges in a case of this kind, for there is only one offence. It would be wrong, for example, in the case of theft by a servant to charge the offender with separate charges under sections 379 and 381. Nor would there be any need to do so because if upon a charge under section 381 the prosecution failed to prove that the offender was a servant he could still be convicted under section 379. Similarly, in a case of armed robbery it is the usual practice to frame one charge in which it is stated that the accused is punishable under sections 392 and 397. If the prosecution fails to prove that the robber was armed, a conviction under section 392 only is recorded.

We are of opinion that section 397 is not intended to include gang-robbery and does not create a separate offence in conjunction with section 395. It follows that the addition of the second charge in this case was wrong, but we do not think that either the addition of this second charge or the fact that the second charge as drawn was unnecessarily wide in any way prejudiced the appellants in their defence against the main charge, which was gang-robbery. We see no reason to interfere in any way in the findings of fact of the learned trial Judge, and we have no doubt upon the evidence that all the accused were properly convicted on the charge of gang-robbery under section 395.

For the above reasons, the conviction under section 397 is quashed, whilst that under section 395 is affirmed and the sentence maintained.

Appeal Dismissed.

MOHAMED JUSOH bin ABDULLAH AND ANOTHER vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan C.J., Malayan Union, Murray Aynsley C.J., Singapore and Brown, J.) April 3, 1947]

Criminal Trial — Sentence — Matters which should be taken into account in fixing sentence.

In this case, the Court of Appeal stated that they did not agree with the principle stated in the case of **Chua Boon Hean v. Regina**(1) that a sentence for a first offender should in general be one third of the maximum sentence prescribed.

The Court held that no sentence can be assessed by a simple mathematical formula and said that many factors must be taken into account according to the circumstances of each individual case. They approved of the following statement of the law in **Halsbury's Laws of England**:— "The Court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character."

Case referred to :—

(1) *Chua Boon Hean v. Regina* (1888) 1 S.L.J. 64.

CRIMINAL APPEAL.

The judgment of the Court was delivered by :—

Willan, C. J. : — In this case the first appellant was convicted of forging a valuable security, to wit an agreement for the sale of land, an offence contrary to section 467 of the Penal Code. The second appellant was convicted of abetment, an offence contrary to sections 109 and 467 of the Penal Code.

An offence against section 467 is punishable with penal servitude for life, or with imprisonment of either description which may extend to ten years, and the offender is also liable to a fine. The punishment for abetment of an offence is the same as that prescribed for the offence abetted.

The learned trial Judge sentenced each of the appellants to three years rigorous imprisonment, and in his grounds of judgment stated that he did so following the principles for the punishment of first offenders laid down in the case of *Chua Boon Hean v. Regina*(1). In that case, which was an appeal against sentence imposed by a Magistrate, the Supreme Court of the Straits Settlements stated that the sentence for a first offender should in general be one-third of the maximum sentence prescribed.

In the case before us both the appellants are first offenders, and they appealed against their convictions and sentences. Their appeals were dismissed and the sentences maintained. In dismissing this appeal we wish it to be known that we do not agree with the principle stated in the case of *Chua Boon Hean v. Regina* (*supra*) in assessing the sentences of first offenders.

In our view no sentence can be assessed by a simple mathematical formula. Many factors must be taken into account according to the circumstances of each individual case. In that respect we would draw attention to the matters which should be taken into account in fixing punishments as set out in *Halsbury's* Laws of England (*Hailsham* Edition) volume 9, para 365 :—

> The Court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character.

Appeal Dismissed.

DE ALWIS v. DE ALWIS.

[Orig. Civil Juris. (Willan, C.J.) July 5, 1947]

International Law — Validity of marriage solemnised under Christian Marriage Enactment during Japanese occupation of Malaya.

This was a suit by the petitioner (wife) for the dissolution of her marriage on the ground that the respondent (husband) had been guilty of adultery. To prove the marriage the petitioner put in evidence the certificate of her marriage with the respondent. That certificate disclosed that the marriage of the petitioner and the respondent was solemnised in Kuala Lumpur on the 29th day of October 2604 (1944) before the Registrar of Civil Marriages for the State of Selangor. This raised the question as to whether the marriage, which took place during the Japanese occupation was valid.

Held, that since the act of the Japanese authorities in appointing a Marriage Registrar for the State of Selangor was an act which it was within their competence to do and which was done in accordance with the existing law, and since the marriage in this case was solemnised in accordance with the provisions of the Christian Marriage Enactment, such marriage was a valid marriage at the time it was solemnised and remained valid after the re-occupation of Malaya.

DIVORCE SUIT.

Rajasooria for the Petitioner.

Respondent Absent,

Willan, C. J. : — This is a suit by the petitioner (wife) for the dissolution of her marriage on the ground that the respondent (husband) has been guilty of adultery.

On the trial of all matrimonial causes the first step is to prove the marriage and, in accordance with the usual practice, the petitioner put in evidence the certificate of her marriage with the respondent. That certificate discloses that the marriage of the petitioner and the respondent was solemnised in Kuala Lumpur on the 29th day of October, 2604 (1944) before the Registrar of Civil Marriages for the State of Selangor.

Since the marriage took place during the Japanese occupation, this immediately raised the question as to whether the marriage is valid and, after hearing evidence and arguments by counsel for the petitioner on this question (the respondent, though served with the notice of hearing, being absent) I adjourned this suit until to-day to give judgment on that preliminary matter.

By virtue of Part VI of the Christian Marriage Enactment (Cap. 109) of the Federated Malay States, Christian marriages may be solemnised by a Marriage Registrar. Marriage Registrars are appointed by the Residents of States, under the provisions of section 6 of that Enactment, the relevant portion of which is as follows :—

> The Resident of any State may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for such State or for any place therein and may revoke any such appointment.

On the question of the validity of this particular marriage I heard the evidence of Mr. P. Samuel, Assistant Registrar, Supreme Court, who was appointed Marriage Registrar for the State of Selangor during the Japanese occupation, and also the evidence of Mr. K. K. Benjamin, an Advocate and Solicitor of the Supreme Court, who, during the Japanese occupation, was appointed by the Japanese Authorities Legal Adviser and Judge for the State of Selangor.

The evidence of Mr. Benjamin is that during the first half of the year 1942 it came to his notice that there were a number of persons in Selangor who wished to get married before a Marriage Registrar under the provisions of the Christian Marriage Enactment to which I have already referred. He thereupon suggested to the Japanese Governor of the State of Selangor that Mr. Samuel should be appointed Marriage Registrar for that State. The Japanese Governor having concurred, this appointment was published in the Malay Mail (New Order) on the 26th day of May, 2602 (1942), as a Government Notice. That Government Notice reads as follows :—

> NOTICE UNDER THE CHRISTIAN MARRIAGE ENACTMENT.
>
> Mr. P. Samuel, Registrar, Supreme Court, Kuala Lumpur, has in addition to his own duties, been